



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: B & W Service Industries, Inc.  
File: B-224392.2  
Date: October 2, 1986

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### DIGEST

1. Procuring officials enjoy a reasonable degree of discretion in evaluating proposals and the General Accounting Office (GAO) will not disturb an evaluation when the record indicates that the conclusions reached in the evaluation were supported by information in the proposals and were consistent with the evaluation factors set forth in the solicitation. Although GAO finds that the agency determined technical scores inconsistently with method prescribed in the solicitation, this did not competitively prejudice the protester because its score remained virtually the same when properly determined.

2. Certificate of Competency (COC) procedures do not apply when a small business firm's offer in a negotiated procurement for custodial services is considered weak under technical evaluation factors relating to experience and past performance, since the COC program is reserved for reviewing nonresponsibility matters, not the comparative evaluation of technical proposals.

3. Protest that successful offeror's price is unreasonably high based on the fact that the protester's price is about 24 percent lower is without merit, where the successful firm's price is third lowest among five offerors and the range of proposed prices is relatively narrow.

4. Protest that contracting officials were biased against minority-owned firms is denied where allegation is based solely on inference or supposition.

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### DECISION

B & W Service Industries, Inc. protests the award of a contract to Safeguard Maintenance Corporation under request for proposals (RFP) No. HC-14756, issued by the Department of Housing and Urban Development. B & W contends that its

proposal was improperly evaluated, that the awardee offered an unreasonably high price, and that the agency sought to avoid contracting with a minority-owned business.

We deny the protest.

The solicitation requested offers to provide custodial services for the agency's headquarters building in Washington, D.C. It provided that in evaluating proposals HUD would consider the following technical factors: (1) Offeror's Experience and Qualifications (30 possible points), (2) Individual Staff Experience of Key Personnel (30 points), (3) Operational Approach, Personnel Coordination, Staffing, and Quality Assurance (30 points), (4) Minority/Women's Business Enterprise Participation (5 points), and (5) Understanding the Work (5 points). HUD listed subfactors under several of the factors along with the number of points assigned to each. These ranged from 20 points for qualifications of the proposed project manager to 2 points for subcontracting plans. The RFP also stated that proposals could receive a maximum score of 100 points for price, which equalled the total available for technical factors.

HUD received 24 proposals by the March 14, 1986, closing date. Five proposals, including those of Safeguard and B & W were determined to be in the competitive range. After conducting oral discussions, the agency requested best and final offers to be submitted by May 22.

In reviewing the best and final offers, the HUD Source Evaluation Board gave Safeguard's proposal the highest technical score, more than double that of B & W, which ranked last. Safeguard's price was the third lowest, while B & W offered the lowest price. Safeguard's proposal received the highest combined price and technical score. B & W protested to our Office following HUD's award of a contract to Safeguard on June 26.

#### Evaluation of B & W Proposal

In its administrative report, HUD summarized the views of its Source Evaluation Board concerning weaknesses in B & W's best and final offer. These included the experience and qualifications of the proposed project manager, plans for accomplishing the work and resolving deficiencies, and the firm's previous experience providing custodial services similar in nature, scope and volume to those required by HUD. B & W states that these matters were raised during oral discussions and addressed in its best and final offer. The protester

believes that HUD's conclusions are unreasonable and asks that we review the evaluation.

In reviewing complaints about a technical proposal, our function is not to conduct a reevaluation and make our own determination about its merits. Procuring officials have a reasonable degree of discretion in evaluating proposals, and we will not question their decision unless it is shown to be arbitrary or in violation of the procurement laws or regulations. Robert Wehrli, B-216789, Jan. 16, 1985, 85-1 CPD ¶ 43. We have compared the proposals of B & W and Safeguard and the evaluation record in key areas, and do not conclude that HUD's evaluation of the relative merits of the two proposals was unreasonable.

The most significant disparity in scores occurred in the areas previously mentioned--the qualifications of proposed project managers, previous corporate experience, and plans for performing the work, training employees, and resolving deficiencies. For example, while B & W has performed comparable contracts for floor surface care, it has not had similar pest control or snow removal responsibilities. Safeguard has extensive recent experience comparable to HUD's requirements in all areas. B & W's plans for snow removal state that the requirements of the contract will be met by subcontract to a well-qualified firm and that a back-up source will be maintained. Safeguard, on the other hand, explained which specific employees would have supervisory responsibility for snow removal and listed their telephone numbers, described necessary equipment, and established priorities for snow and ice clearance. In our opinion, B & W's technical score relative to Safeguard's in these areas was reasonable.

In reviewing the procurement record we found that the Source Evaluation Board deviated substantially from the scoring plan in the RFP. Instructions given the Board by HUD contracting officials provided for each subfactor to be scored from 1 to 10, and then these scores were to be weighted according to the relative number of points assigned to the subfactor in the solicitation. As discussed above, points assigned in the RFP to subfactors ranged from 2 to 20 points. The Source Evaluation Board gave scores of 1 to 10 for each subfactor, but did not weight the scores. Instead, it determined total technical scores by merely averaging the points given the subfactors. As a result, subfactors assigned 2 points in the RFP had the same weight as those assigned 20, and factors that were supposed to be equally important varied in importance depending upon the number of subfactors under each each.

While HUD's calculation of technical scores was improper, we find that B & W was not competitively prejudiced. We performed the weighing of subfactor scores as provided in HUD's instructions to the Source Selection Board, and found that the firm's technical score remained virtually the same relative to Safeguard's. Consequently, B & W's combined score for technical factors and price changed less than 1 percent and remained well below the awardee's score.

#### Certificate of Competency Procedures

B & W argues that those portions of its proposal addressing company experience and past performance and the experience of key personnel concern responsibility and should not have been evaluated by HUD. Rather, since it is a small business, B&W believes that HUD should have referred the matter to the Small Business Administration (SBA) under certificate of competency (COC) procedures.

Contracting officers evaluate prospective contractors to determine their responsibility, that is, their capability to perform the work. Federal Acquisition Regulation, 48 C.F.R. § 9.103(b) (1985). COC referrals to SBA are only required where contracting officers find small businesses to be nonresponsible. In this case, the agency did not find the protester nonresponsible, but considered its proposal to be weak under some evaluation factors listed in the solicitation.

With regard to these factors, it is not improper in a negotiated procurement to include traditional responsibility factors among the technical evaluation criteria. Anderson Engineering and Testing Co., B-208632, Jan. 31, 1983, 83-1 CPD ¶ 99. Such factors may include experience and personnel qualifications. See Andover Data Services, Inc., B-209243, May 2, 1983, 83-1 CPD ¶ 465; Numax Electronics, Inc., B-210266, May 3, 1983, 83-1 CPD ¶ 470. As long as the factors are limited to areas which, when evaluated comparatively, can provide an appropriate basis for a selection that will be in the government's best interest, COC procedures do not apply to a technical proposal deficient in those areas. In our opinion, the evaluation factors used here, company experience and qualifications and the experience of key personnel, were appropriate for comparative evaluation in a negotiated procurement pertaining to custodial services in HUD's headquarters building. Accordingly, COC procedures were inapplicable to HUD's rating of B & W's proposal in those areas, and we deny the protest on this basis.

### Safeguard's Price and Alleged Prejudice in Evaluations

Apparently because its price is approximately 24 percent lower, the protester contends that Safeguard's price is unreasonably high. While the firm's price is higher than B & W's, it is the third lowest out of five offerors and relatively close to the prices of the others. Based on the range of prices offered, we have no basis to question the reasonableness of Safeguard's price.

Finally, B & W contends that HUD manipulated the selection in order to avoid contracting with a minority-owned firm or one that would employ some of the current custodial contractor's employees. We find no evidence of such prejudice in the procurement record, and believe that B & W's allegation constitutes mere speculation. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition, and deny this basis of B & W's protest. See Maxima Corp., B-220072, Dec. 24, 1985, 85-2 CPD ¶ 708.

We deny the protest.

*for Seymour Gross*  
Harry R. Van Cleave  
General Counsel